



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

**75 Hawthorne Street  
San Francisco, CA 94105**

September 28, 2012

**SPECIAL NOTICE LETTER  
URGENT LEGAL MATTER  
PROMPT REPLY NECESSARY  
VIA FEDERAL EXPRESS**

Claudette Earl  
Earl Mfg. Co., Inc.  
304 Armsley Sq.  
Ontario, CA 91762-1607

Re: Earl Mfg. Co., Inc.  
Special Notice Letter Related to the Omega Chemical Corporation Superfund Site,  
Los Angeles County, California

Dear Ms. Earl:

This letter follows the general notice letter or Unilateral Administrative Order ("UAO") that the U.S. Environmental Protection Agency ("EPA") sent several years ago to Earl Mfg. Co., Inc. in connection with the Omega Chemical Corporation Superfund Site (the "Site"), located in Los Angeles County, California. In that letter or UAO, EPA notified you of your potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund"), 42 U.S.C. § 9607(a), for the cleanup of the Site, including all costs incurred by EPA in responding to releases at the Site. (The term "you", as used herein, means Earl Mfg. Co., Inc.). EPA is now contacting Earl Mfg. Co., Inc. in an attempt to resolve its responsibility for certain remedial work proposed at the Site.

The Site includes the former location of a used solvent and refrigerant recycling, reformulation, and treatment facility ("Omega Chemical") located at 12504 and 12512 Whittier Boulevard in Whittier, California, as well as the areal extent (i.e., plume) of contaminated groundwater emanating from the Omega Chemical property, which extends approximately four and one-half miles downgradient and is up to one and one-half miles wide. There are several locations within the Omega plume area where chemical releases from other facilities have commingled with the Omega plume. The general location of the plume is shown in Figure 1 of the November 2011 fact sheet enclosed herewith.

## **Background**

Based on an extensive review of records related to the release and/or disposal of hazardous substances at the Site, EPA identified Earl Mfg. Co., Inc. as a potentially responsible party (“PRP”) at the Site. Under CERCLA, Earl Mfg. Co., Inc. and the other PRPs at the Site are responsible for the costs of cleaning up the Site. EPA has selected a cleanup approach (formally referred to as a remedial action) for the Site, which is described in a document called a Record of Decision (“ROD”), which EPA issued on September 20, 2011. The OU2 ROD is enclosed herewith.

In order to facilitate cleanup of hazardous substances at the Site, EPA divided the Site into three operable units (“OUs”): OU1, OU2 and OU3. OU1 includes the former Omega facility and immediate vicinity. OU2 is the extent of contamination in groundwater generally downgradient from the former Omega facility, which extends approximately four and one-half miles downgradient. The OU2 contamination has commingled with chemicals released at other areas overlaying the OU2 groundwater plume. OU3 refers to vapor intrusion from subsurface contamination that has occurred in several buildings on and near the Omega Chemical property.

During an assessment of the Site in 1995, EPA observed approximately 3,000 drums at the Omega Chemical property in various stages of deterioration. Data gathered indicated the presence of hazardous substances in the subsurface soils and groundwater at the Site, including, but not limited to, tetrachloroethylene (PCE), trichloroethylene (TCE), methylene chloride, and Freons 11 and 113. On May 3, 1995, EPA issued an Action Memorandum authorizing actions necessary to abate imminent and substantial endangerment at the Site, including securing the Omega Chemical property, conducting sampling, removing grossly contaminated equipment, structures, and debris, removing containerized wastes, and disposing, stabilizing and treating grossly contaminated soils.

On May 9, 1995 and August 31, 1995, EPA issued UAOs to approximately 170 “major” generator PRPs – i.e., parties that sent more than 10 tons of hazardous materials to the Omega facility – to perform removal activities at the Site. These major contributing parties thereafter formed a workgroup called the Omega Chemical Site PRP Organized Group, or “OPOG”, and completed the required activities. In September 1998, EPA proposed the Site for listing on the National Priorities List (“NPL”). The Site was placed on the NPL on January 19, 1999.

Members of OPOG are performing work under a Consent Decree entered by the United States District Court, Central District of California, on February 28, 2001, and amended thereafter (“2001 CD”). Under the 2001 CD, the Settling Defendants agreed to pay a portion (\$282,636) of past costs and perform work at the Site, including groundwater extraction and treatment near the former Omega facility to contain contaminated groundwater, and an RI/FS addressing soils in the OU1 area. Under the 2001 CD, some defendants made payments in lieu of their direct participation in the required work.

In August 2002, EPA issued general notice letters to approximately 100 additional major generator PRPs. EPA encouraged these PRPs to initiate a dialogue with OPOG concerning joining the established workgroup. The 2001 CD was amended to include parties that joined the workgroup after 2001.

Prior to signing the 2001 CD, several PRPs withdrew from the group and elected not to sign the settlement. They formed a group that became known as the Omega Small Volume Organized Group, or "OSVOG." On January 5, 2004, EPA issued a UAO to fifteen OSVOG members and three other recalcitrant parties. An Amended UAO was issued on July 2, 2004. The work required included the installation of groundwater wells and sampling downgradient from the Omega Chemical property.

On October 28, 2003, EPA sent liability notice letters to approximately 300 *de minimis* parties that had sent between 3 and 10 tons of hazardous substances to the former Omega facility. In 2005, EPA settled with 171 such parties to resolve their potential liability at the Site in an Administrative Order on Consent ("AOC"), finalized on December 12, 2005, pursuant to which EPA was compensated approximately ten million dollars.

In April 2006, EPA required OPOG to perform a removal action to address contaminated indoor air in a roller skating rink (Skateland) located on Whittier Boulevard, adjacent to the Omega Chemical property. This action was memorialized in an amendment to the 2001 CD. OPOG subsequently funded the purchase of Skateland and demolished it in April 2007.

In November 2006, EPA settled with twelve parties deemed to have limited ability to pay for response costs incurred and to be incurred at the Site. EPA received approximately \$100,000 pursuant to this settlement.

In November 2007, with EPA oversight, OPOG completed an RI for OU1 soils, and an FS in May 2008. In June 2008, EPA released for public comment a Proposed Plan for soil cleanup at OU1, and selected a remedial action for OU1 in a final OU1 ROD, on September 30, 2008. The remedy consists of a soil vapor extraction ("SVE") system and institutional controls.

In June 2009, EPA sent Special Notice Letters to PRPs soliciting an offer to perform the OU1 Remedial Design/Remedial Action ("RD/RA") identified in the ROD and payment of EPA's unreimbursed response costs. In October 2010, the U.S. District Court for the Central District of California entered a CD between EPA and OPOG that requires the PRP group to design, construct and operate the OU1 soil remedy. Under the settlement, EPA was reimbursed a portion of its past response costs (\$1,500,000) and all of EPA's costs associated with overseeing that cleanup.

In November 2009, EPA signed an AOC with OPOG to mitigate the vapor intrusion in additional buildings at OU3. The AOC has been modified twice to encompass additional buildings and response work; these mitigation efforts are ongoing.

From March 2007 to October 2010, EPA sent general notice letters to PRPs at nine locations overlying the OU2 plume, which contributed to OU2 contamination.

EPA continues to monitor the extent of contamination in OU2, and to investigate other potential sources of contamination.

### **Special Notice and Negotiation Moratorium**

EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between Earl Mfg. Co., Inc., other PRPs, and EPA for implementation of the response action. Under Section 122(e), this letter triggers a sixty (60)-day moratorium on certain EPA response activities at the Site. However, EPA reserves the right to undertake response or enforcement action(s) at the Site regarding a significant threat to the human health or the environment within the moratorium period.

During this 60-day period, Earl Mfg. Co., Inc. and the other PRPs are invited to participate in formal negotiations with EPA in an effort to reach a settlement to conduct or finance the response action at the Site. We will consider this letter to have been received by you seven (7) calendar days after its date; thus, the 60-day negotiation period ends on November 27, 2012. The 60-day negotiation moratorium will be extended for an additional sixty (60) days if PRPs provide EPA with a “good faith offer” to conduct or finance the response action and reimburse EPA for its costs incurred to date. If EPA determines that your proposal is not a “good faith offer,” you will be notified in writing of EPA’s decision to end the moratorium. If the moratorium is extended for an additional 60 days, negotiations will conclude on January 26, 2013. If settlement is reached between EPA and the PRPs within the 120-day negotiation moratorium, the settlement will be embodied in a CD for RD/RA. When approved by EPA and the U.S. Department of Justice (“DOJ”), the CD will then be lodged in federal court.

If a “good faith offer” is not received within sixty (60) days, or a timely settlement cannot be reached, EPA may take appropriate action at the Site, which may include either of the following options: (1) EPA may fund the remedial action and pursue a cost recovery claim under Section 107 of CERCLA, 42 U.S.C. § 9607, against you and/or the other PRPs; or (2) EPA may issue a UAO to you and/or the other PRPs under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring you and/or them to perform the work described in the ROD. If the recipients of a UAO refuse to comply with the UAO, EPA may pursue civil litigation against the recipients to require compliance.

Pursuant to the Superfund Reforms announced on October 2, 1995, when EPA enters into future RD/RA settlements, EPA intends to compensate settlers for a portion of the shares specifically attributable to insolvent and defunct PRPs (“orphan share”), if any. EPA believes that there may be PRPs at this Site who are insolvent or defunct. If you, either individually or with other PRPs, enter into an RD/RA settlement with EPA and provide sufficient information about the existence, liability, and relative shares of responsibility of insolvent and defunct PRPs, EPA will analyze the information and determine whether to consider the shares of these parties in the amount of EPA’s past costs and future oversight costs to recover in such settlement.

### **Good-Faith Offer**

A proposed Consent Decree is enclosed to assist you in developing a “good faith offer.” This draft CD is not currently binding on EPA and is subject to revision and approval by EPA and DOJ. As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 60 days if the PRPs submit a “good faith offer” to EPA. A “good faith offer” to conduct or finance

the remedial action is a written proposal that demonstrates your qualifications and willingness to perform such work and includes the following elements:

- A statement of your willingness and financial ability to implement the requirements of the ROD and proposed CD, and that provides a sufficient basis for further negotiation;
- A demonstration of your technical capability to carry out the remedial action, including identification of the firm(s) that may actually conduct the work or a description of the process that will be undertaken to select the firm(s);
- A statement of your willingness to reimburse EPA for past costs as well as the costs EPA would incur in overseeing your implementation of the RD/RA;
- A response to the proposed Consent Decree. If your offer contemplates modifications to the proposed CD, please work from the enclosed draft CD and submit a version showing any modifications to it (i.e., a redline/strikeout version in Microsoft Word or Word Perfect);
- A detailed statement of work or work plan identifying how you intend to proceed with the remedial action. We have enclosed a proposed statement of work for RD/RA that we would accept as part of a good-faith offer. If your offer contemplates modifications to the proposed statement of work, please work from this draft and submit a version showing any modifications to it. The draft statement of work is not currently binding on EPA and is subject to revision and approval by EPA and DOJ;
- A list identifying each party on whose behalf the offer is being made, including name, address, and telephone number of each party; and
- The name, address, and telephone number of the person or party who will represent you in negotiations.

#### **Demand for Reimbursement of Costs**

With this letter, EPA demands that you reimburse EPA for its costs incurred to date, and encourages you to voluntarily negotiate a Consent Decree in which you and other PRPs agree to perform the RD/RA. In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, and as discussed above, EPA has already taken numerous response actions and incurred costs in response to conditions at the Site. EPA is seeking to recover from Earl Mfg. Co., Inc. and other PRPs at the Site its response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The total unreimbursed response costs identified through June 30, 2011 for the Site are approximately \$16,148,299. This figure includes interest accruing as of June 10, 2009, the date of a prior special notice letter EPA sent to PRPs regarding work to be performed at the Site. This figure includes some but not all of the U.S. Department of Justice's costs associated with the Site. A summary of these costs is enclosed herewith; an updated summary will be provided during negotiations. Under Section 107(a) of CERCLA, EPA hereby makes a demand for payment from you and other PRPs for the above amount plus all interest authorized to be recovered under Section 107(a).

Additional unreimbursed costs of the State of California associated with the Site, through June 30, 2011, excluding interest, which are not included in EPA's cost summary, are \$259,424.43. A summary of these State costs is also enclosed.

EPA anticipates expending additional funds for response activities, which may include a remedial action or oversight of a remedial action. Whether EPA funds the response action or simply incurs costs by overseeing the parties conducting the response activities, you are potentially liable for all expenditures plus interest.

Some or all of the costs associated with this Notice may be covered by current or past insurance policies issued to Earl Mfg. Co., Inc. Most insurance policies will require that you timely notify your carrier(s) of a claim. To evaluate whether you should notify insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of your or your company's first contact with the Site, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that you file for protection in a bankruptcy court, you must include EPA as a creditor, because EPA has a potential claim against you. EPA reserves the right to file a proof of claim or application for Reimbursement of Administrative Expenses.

### **PRP Steering Committee**

To assist PRPs in negotiating with EPA concerning this matter, EPA is enclosing a list of the names and addresses of other PRPs to whom it is sending this Notice, including the volume of hazardous substances contributed by PRPs whose liability is based entirely or in part on their status as "arrangers" under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), sorted alphabetically and by volume.

EPA has been informed that certain PRPs have settled with OPOG for the settlors' Sitewide liability; consequently, EPA is not sending this Notice to such settlors, whose names are listed on a table enclosed herewith. Although these settlors have not discharged their obligation directly to EPA for costs related to the Site, EPA will not send this Notice to such parties if it receives a timely good faith offer from OPOG on behalf of these settlors.

Finally, the three most recent fact sheets about the Site are enclosed. Additional fact sheets and further information about the Site can be found on the following EPA webpage:

<http://www.epa.gov/region09/OmegaChemical>

EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. EPA recognizes that the allocation of responsibility among PRPs may be difficult. If PRPs are unable to reach consensus among themselves, we encourage the use of the services of a neutral third party to help allocate responsibility. Third parties are available to facilitate negotiations. At the PRPs' request, EPA will provide a list of experienced third-party mediators, or help arrange for a mediator.

For your information, OPOG's contacts are:

Larry G. Gutterridge, Esq.  
(213) 430-2507

Gene A. Lucero, Esq.  
(213) 891-8332

Keith F. Millhouse, Esq.  
(805) 230-2280

### **Administrative Record**

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, EPA has established an Administrative Record containing the documents that serve as the basis for EPA's selection of the appropriate response action for the Site. This Administrative Record is located at the Whittier Public Library, 7344 S. Washington Avenue., Whittier, CA, and at the U.S. EPA Superfund Records Center, 95 Hawthorne Street, 4<sup>th</sup> Floor, San Francisco, CA, (415) 536-2000. You may wish to review the Administrative Record to assist you in responding to this letter, but your review should not delay such response beyond the 60-day period provided by CERCLA.

### **PRP Response and EPA Contact Person**

You are encouraged to contact EPA by November 27, 2012 to indicate your willingness to participate in future negotiations concerning this Site. You may respond individually or through a steering committee. If EPA does not receive a timely response, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the Site, and that you have declined any involvement in performing the response activities.

Your response to this Special Notice Letter and the demand for costs included herein, including written proposals to perform the RD/RA for the Site, should be sent to:

Lynda Deschambault, Remedial Project Manager  
U.S. Environmental Protection Agency  
75 Hawthorne Street, SFD-7-1  
San Francisco, CA 94105

and:

Stephen Berninger, Assistant Regional Counsel  
U.S. Environmental Protection Agency  
75 Hawthorne Street, ORC-3  
San Francisco, CA 94105

You may also send a response via email to [deschambault.lynda@epa.gov](mailto:deschambault.lynda@epa.gov) and [berninger.stephen@epa.gov](mailto:berninger.stephen@epa.gov).

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, EPA urges that you give immediate attention and prompt response to this letter.

### **Resources and Information for Small Businesses**

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law at <http://www.epa.gov/brownfields/laws/index.htm> and review EPA guidance regarding these exemptions at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/>.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers, which offer various forms of resources to small businesses. You may inquire about these resources on the Agency's website at <http://www.epa.gov>. In addition, information on contacting EPA's Small Business Ombudsman is available at <http://www.epa.gov/sbo>. Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act, which is enclosed with this letter.

If you have any questions regarding the technical aspects of this letter, please contact Lynda Deschambault, Remedial Project Manager, at (415) 947-4183 (or [deschambault.lynda@epa.gov](mailto:deschambault.lynda@epa.gov)). If you have an attorney handling your legal matters, please direct his or her questions to Steve Berninger, Assistant Regional Counsel, at (415) 972-3909 (or [berninger.stephen@epa.gov](mailto:berninger.stephen@epa.gov)).

My staff and I look forward to working with you during the coming months.

Sincerely,



Kathleen Salyer  
Assistant Director, Superfund Division  
California Site Cleanup Branch

Enclosures (all provided on enclosed CD)

- OU2 Interim ROD, September 2011
- Draft Consent Decree
- Draft Statement of Work for RD/RA
- EPA Summary of Costs (for the period from 10/1/1980 to 06/30/2011)



- DTSC Summary of Costs (through 06/30/2011)
- List of PRPs that Settled with OPOG (and are not currently receiving this Notice)
- Information Sheet, U.S. EPA Small Business Resources
- List of PRPs Being Sent Special Notice Letters, listed alphabetically
- List of PRPs Being Sent Special Notice Letters, listed by volume
- U.S. EPA Fact Sheet: "EPA Issues Draft Remedial Investigation Report for Downgradient Plume at Omega Site", September 2009
- U.S. EPA Fact Sheet: "Proposed Plan for OU-2 Groundwater Contamination", August 2010
- U.S. EPA Fact Sheet: "EPA Selects Remedy for Groundwater Contamination at Operable Unit 2," November 2011

cc: Larry Gutterridge, OPOG  
 Gene Lucero, OPOG  
 Keith Millhouse, OPOG  
 Karl Fingerhood, DOJ  
 Steve Berninger, EPA  
 Lynda Deschambault, EPA  
 Keith Olinger, EPA  
 Fred Schauffler, EPA  
 Stephanie Lewis, CA DTSC  
 Steve Koyasako, Esq., CA DTSC  
 Arthur G. Heath, Ph.D., CA RWQCB